

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

CC Docket No. 96-61

Comments on Transition Plan

The Ad Hoc Telecommunications Users Committee, ABB Business Services, Inc., BP Amoco, Dana Corporation, Nestlé USA, Inc., Schneider National Incorporated, the Securities Industry Association, Target Corporation and U.S. Bancorp., (hereinafter the "Business Consumers") hereby respond to the Commission's request for comments on whether, during the nine-month detariffing transition period, it should permit long distance carriers to tariff arrangements that bundle domestic and international services.¹ The Commission's request for comments comes on the heels of a decision by the U.S. Court of Appeals for the D.C. Circuit upholding the Commission's orders requiring detariffing of interstate, domestic, interexchange services.² Days after

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¹ Public Notice, *Domestic, Interexchange Carrier Detariffing Order Takes Effect*, May 9, 2000.

² *MCI WorldCom v. FCC*, Slip Op. 2000 WL 390520, No. 96-1459 (D.C. Cir. April 28, 2000).

its issued that decision, the court lifted its stay of the Commission's orders *sua sponte*.³

The detariffing transition plan governs the tariffing practices of nondominant, interexchange carriers ("Carriers") from May 1, 2000 through January 31, 2001. During this period, Carriers may file new and revised tariffs for mass market interstate, domestic, interexchange services. They may not, however, file new or revised tariffs for customer-specific arrangements ("Contract Tariffs") involving those services. If Carriers bundle both domestic and international services in new or revised Contract Tariffs, the domestic portions must be provided pursuant to contracts, and the international portions must be provided pursuant to the Carriers' tariffs. By the end of the transition period, the Carriers must cancel the all of their remaining tariffs for domestic services that are subject to the *Detariffing Order*.⁴

Since the court issued its orders, the Carriers have responded in widely divergent ways. One major Carrier has told customers that it is ready to comply fully with the *Detariffing Order* and the transition plan. A representative of another major Carrier has told customers that it intends to continue to file Contract Tariffs that bundle domestic and international services. Another representative of this second Carrier has told other customers that the Carrier intends to tariff neither the domestic nor the international portions of its new and

³ *MCI WorldCom v. FCC*, Order, No. 96-1459 (D.C. Cir. May 1, 2000).

⁴ *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order, 11 FCC Rcd 20730 (1996) (*Detariffing Order*); Order on Reconsideration, 12 FCC Rcd 15014 (1997) (*Order on Reconsideration*); Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999) (*Second Order on Reconsideration*).

revised Contract Tariffs. The second Carrier is either confused or is trying to confuse its customers. We can only hope that prompt and clear action by the Commission on this matter will put an end to such behavior.

The second Carrier's position is inexcusable. The *Detariffing Order* was clear that, although Carriers must continue to tariff the international portions of bundled Contract Tariffs, they may not file new or revised tariffs for the domestic portions of those arrangements.⁵ The recent Public Notice made the point with equal clarity. All Carriers must comply with the Commission's orders pending action on petitions for reconsideration or seek a stay of that order from the Commission or a court.⁶ In this case, the court's stay has been lifted, and no Carrier has asked the Commission or the court to reinstate it pending the Commission's action on AT&T's Petition for Limited Reconsideration and Clarification (the "Petition").

In its Petition filed in late 1996, AT&T argued that the Commission's decision not to detariff the international component of integrated offerings "subjects carriers and customers to the cumbersome process of implementing integrated offerings through separate arrangements – tariffs for the international components, and contracts for the domestic components." Petition at 15. That is certainly true. Much of the confusion, and associated delay and cost, however, is attributable to the Carriers' failure to adequately train and educate their personnel on the "rules of the road" during the transition period.

⁵ *Detariffing Order* at 20782-83. This aspect of the *Detariffing Order* was not modified by the *Order on Reconsideration* or the *Second Order on Reconsideration*.

⁶ 47 CFR §1.106(n).

Moreover, postponing the detariffing of domestic services will not solve the problem that AT&T identifies. As long as international components must be tariffed, the parties will have to generate some additional paperwork. The only permanent remedy for this “cumbersome process” is to extend detariffing to the international components of these integrated offerings. Until that happens, the carriers should educate their personnel about these matters rather than using the confusion that results from their own misrepresentations to customers as justification for retariffing the domestic portions of bundled offerings.

The Commission already has addressed the concerns raised by AT&T that its decision to require detariffing of the domestic portions and the continued tariffing of the international portions of Contract Tariffs will impose additional costs on carriers and customers. It has found that this approach, “[w]ill not impose substantial administrative expenses on carriers or customers.”⁷ To mitigate the cost of partitioning bundled offerings, the Commission modified its rules to permit the Carriers, “[t]o cross-reference detariffed interstate, domestic, interexchange service offerings in their tariffs for international services for purposes of calculating discounts and minimum revenue requirements.”⁸

Although transaction costs for bundled offerings could be reduced further if both domestic and international services were detariffed, the Commission apparently is not now in a position to require detariffing of international services. In the *Detariffing Order*, the Commission concluded that the record did not justify

⁷ *Detariffing Order*, at 20783.

⁸ *Id.*

detariffing of international services.⁹ The Commission reasoned that it should address detariffing of international services in a separate proceeding in which it considers the state of competition in the international market.¹⁰ If such a proceeding may be warranted at this time (as we believe it is), the Commission should take that step. It should not, in the meanwhile, attempt to eliminate the current inconveniences faced by the Carriers and their customers by allowing the Carriers to tariff the domestic portion of bundled Contract Tariffs.

The only thing that postponement of detariffing or *permissive* detariffing of bundled offerings would accomplish would be continuation of a regime under which carriers can enter into contracts that they can later abrogate with impunity. The weight to be granted to AT&T's claim that allowing carriers to continue to tariff all portions of these integrated offerings "cannot harm customers" (Petition at 16) should be assessed in light of the judicial record on these matters.¹¹ Continued application of the filed rate doctrine to domestic services would subvert the Commission's goal of serving the public interest by preventing carriers from using the filed rate doctrine to undermine, "consumers' legitimate business expectations." *Detariffing Order*, at 20762.

As the Commission may have recognized when it adopted a *mandatory* detariffing requirement – and the Business Consumers expect -- the Carriers are likely to voluntarily tariff those service arrangement in case where they have

⁹ *Id.*

¹⁰ *Id.*

¹¹ See, e.g., *AT&T Corp. v. Central Office Tel. Co.*, 118 S. Ct. 1956 (1998); *Marco Supply Co. v. AT&T Communications, Inc.*, 875 F.2d 434 (4th Cir. 1989); *Fax Comunicaciones v. AT&T*, 952 F. Supp. 946 (E.D.N.Y. 1996).

more negotiating leverage than their customers. Only those customers with superior negotiating leverage will be able to prevail upon the Carriers to not tariff the domestic portion of bundled Contract Tariffs. Thus, in a permissive tariffing environment, the Carriers will be able to use tariffing, in most instances, to unilaterally change service contracts and frustrate legitimate business expectations. That will not serve the public interest.

In view of the foregoing, the Business Consumers urge the Commission to: (1) not allow the Carriers to tariff the domestic portion of bundled offerings that also contain international services; (2) act quickly on the matters raised in the transition plan Public Notice and (3) promptly initiate and conclude a proceeding looking at whether the Commission should extend detariffing to international services.

Respectfully submitted,

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BP AMOCO
Dana Corporation
Nestlé USA, Inc.
Schneider National Incorporated
Securities Industry Association
Target Corporation
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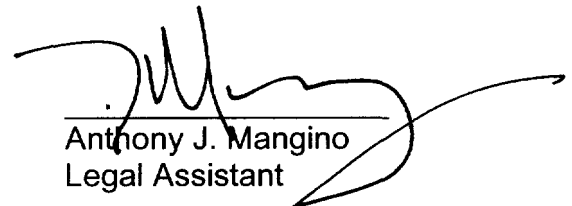
Certificate of Service

I, Anthony J. Mangino, hereby certify that a true and correct copy of the preceding Comments on Transition Plan of the Business Consumers was served this May 31, 2000 via hand delivery and overnight mail upon the following parties:

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